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July 15, 2005

**VIA HAND DELIVERY**

Mr. Charles L. A. Terreni  
Chief Clerk/Administrator  
South Carolina Public Service Commission  
Synergy Business Park, The Saluda Building  
101 Executive Center Drive  
Columbia, South Carolina 29210

**Re: Petition of MCImetro Access Transmission Services, LLC  
for Arbitration of Certain Terms and Conditions of Proposed  
Agreement with Horry Telephone Cooperative, Inc. Concerning  
Interconnection and Resale under the Telecommunications Act  
of 1996  
Docket No. 2005-188-C**

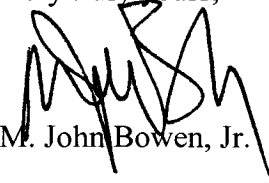
Dear Mr. Terreni:

Enclosed for filing in the above-referenced matter please find an original and ten (10) copies of the attached Return to Petition. By copy of this letter and certificate of service, all parties of record are receiving a copy of the Return to Petition via hand-delivery.

Please clock in a copy of the Return to Petition and return it with our courier.

Thank you for your assistance.

Very truly yours,



M. John Bowen, Jr.

MJB/rwm

Enclosures

cc: Parties of Record  
Bill Rabon

**BEFORE THE**  
**PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**

**DOCKET NO. 2005-188-C**

In Re: Petition of MCImetro Access Transmission )  
Services, LLC for Arbitration of Certain Terms )  
and Conditions of Proposed Agreement with )  
Horry Telephone Company, Concerning )  
Interconnection and Resale under the )  
Telecommunications Act of 1996 )

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**RETURN TO PETITION OF MCIMETRO ACCESS TRANSMISSION SERVICES,  
LLC FOR ARBITRATION WITH HORRY TELEPHONE COMPANY UNDER THE  
TELECOMMUNICATIONS ACT OF 1996**

Horry Telephone Company ("Horry") respectfully submits this Return to the Petition for Arbitration filed by MCImetro Access Transmission Services, LLC ("MCI"). In its Petition, MCI sets forth ten (10) unresolved issues for arbitration. Many of the issues are related and can be grouped conceptually. (For example, Issues 1, 6, and 8 relate to the same topic.) Additionally, while Horry does not agree with MCI's characterization or framing of the issue in all cases, to avoid confusion and for the convenience of the Commission we will use MCI's statement of the issue but will attempt to explain the true basis for the dispute in the discussion of Horry's position on the issue.

In presenting the disputed language throughout this document, language proposed by Horry is shown in **Bold** and language proposed by MCI is shown in Underlined and Italic print.

Horry is being represented in this proceeding by the McNair Law Firm and JSI (telecommunications consultants). Copies of all pleadings in this matter should be provided to the following:

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## **UNRESOLVED ISSUES**

### **A. GENERAL TERMS AND CONDITIONS**

#### **ISSUE #1**

**Issue:** Should companies be required to provide JIP information? (GT& C, Section 9.5)

**Horry Position:** Horry should have the ability to determine the proper jurisdiction of the calls delivered to its switches. Jurisdiction Information Parameter (JIP) is one of the pieces of information that is available and technically feasible which can support Horry's ability to establish the proper jurisdiction of calls terminating to their networks.

**Disputed Language:** The Parties shall each perform traffic recording and identification functions necessary to provide the services contemplated hereunder. Each Party shall calculate terminating duration of minutes used based on standard automatic message accounting records made within each Party's network. The records shall contain the information to properly assess the jurisdiction of the call including ANI or service provider information necessary to identify the originating company, including **the JIP and** originating signaling information. The Parties shall each use commercially reasonable efforts, to provide these records monthly, but in no event later than thirty (30) days after generation of the usage data.

**Discussion:** The jurisdiction of the call determines the appropriate intercarrier compensation exchanged between the Parties for the exchanged traffic. For all intraLATA calls exchanged between Horry and MCI, Horry has proposed no per minute of use (MOU) charges. Intrastate interLATA toll calls are compensated at the appropriate South Carolina intrastate switched access rates which are approximately \$0.01 per MOU. If the call is an Interstate toll call, the appropriate interstate switched access charges apply and these rates range from \$0.015 to \$0.025 per MOU. Horry has discovered that some traffic that is

intrastate or interstate toll is entering their network disguised as local traffic in order for carriers to avoid the payment of access charges. Based on investigation by several industry groups, including a special Phantom Traffic Conference held by the National Exchange Carriers Association in April 2004, the traffic can be improperly identified by several methods:

One method of misrepresenting the traffic is to substitute a local calling party number (“CPN”) for the actual CPN of the call. Because carriers have the ability to substitute the CPN, other methods in addition to the CPN are required to properly identify the true jurisdiction of the call.

Toll calls are also incorrectly identified by CPN when telephone numbers are assigned to customers that are not physically located in the rate center where the number is assigned. In the case of a virtual NXX (VNXX), telephone numbers are obtained in one rate center and assigned to customers in another rate center or even another state. When a South Carolina telephone 803-666 number is assigned to a customer physically located in San Francisco, the CPN will accurately show 803-666-2222, but the call is in fact an interstate call. Additional information is required to determine if that call is local or toll.

The jurisdiction information parameter (JIP) is a six (6) digit NPA-NXX field in the SS7 message that identifies the rate center or switch from which the call was originated. In the example of the customer located in San Francisco calling to South Carolina, the CPN would show the 803-666-2222 but the JIP would be populated with a San Francisco NPA-NXX, for example 415-454. Horry uses both the CPN and the JIP to determine the jurisdiction of the call. MCI argued that JIP would not give the proper jurisdictional information because its switch serves a larger area than a typical RLEC switch. This is not

the case. If supplied, the JIP would still identify the call from San Francisco as an interstate call.

The JIP still helps identify the jurisdiction of the call even in instances where the switch covers a large geographic area. At a minimum, the JIP helps identify calls that are originated outside the regional switch. Therefore the call originated in San Francisco would be identified as a toll call. In the reverse, a call with a San Francisco telephone number that is located in Columbia, SC would be identified as a local Columbia call by the local JIP that would be populated by the MCI switch.

JIP has been addressed in the Alliance for Telecommunications Industry Solution's ("ATIS") Ordering and Billing Forum ("OBF")<sup>1</sup> over the last several years. In December of 2004, open issues in the OBF went to final closure to become standard. The result is that there are seven rules for populating the JIP. Although the JIP was not made a mandatory field, its use is strongly recommended. Two of the seven rules address the issue of inclusion of JIP:

Rule 1. JIP should be populated in the Initial Address Messages (IAMs) of all wireline and wireless originating calls where technically feasible.

Rule 3. The Network Interconnection Interoperability Forum (NIIF) does not recommend proposing that the JIP parameter be mandatory since calls missing any

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<sup>1</sup> ATIS is a United States based body that is committed to rapidly developing and promoting technical and operations standards for the communications and related information technologies industry worldwide using a pragmatic, flexible and open approach. Over 1,100 industry professionals from more than 350 communications companies actively participate in ATIS' 22 industry committees and incubator solutions programs. These committees include National Interconnection Inter-operability Forum (NIIF), Industry Number Committee (INC) which oversees North American Number Committee (NANC), and the Ordering and Billing Forum (OBF). ATIS develops standards and solutions addressing a wide range of industry issues in a manner that allocates and coordinates industry resources and produces the greatest return for communications companies. ATIS creates solutions that support the rollout of new products and services into the communications marketplace. Its standardization activities for wireless and wireline networks include interconnection standards, number portability, improved data transmission, Internet telephony, toll-free access, telecom fraud, and order and billing issues, among others. ATIS is accredited by the American National Standards Institute (ANSI).

mandatory parameter will be aborted. However the NIIF strongly recommends that the JIP be populated on all calls where technologically possible.

The OBF rules also address the MCI use of a switch that serves a regional area:

Rule 4. Where technically feasible if the origination switch or mobile switching center (“MSC”) serves multiple states/LATAs, then the switch should support multiple JIPs such that the JIP used for a given call can be populated with an NPA-NXX that is specific to both the switch as well as the state and LATA of the caller.

If the JIP cannot be populated at the state and LATA level, the JIP should be populated with NPA-NXX specific to the originated switch or MSC where it is technically feasible.

All major switch vendors support JIP in their switches. At minimum the JIP parameter is included with the local number portability (“LNP”) software if it was not already part of the switch. Since LNP is a requirement for both MCI and Horry, JIP is technically feasible and should be required. The Commission should adopt Horry’s language on this issue that requires both JIP and CPN.

## **ISSUE #2**

**Issue:** Should End User Customer be defined as only customers directly served by the Parties to the contract? (GT&C, Glossary Section 2.17)

**Horry position:** This agreement is limited in scope to the intraLATA traffic exchanged between customers of one Party and the customers of the other Party. Other carriers that provide local exchange services to customers and wish to exchange traffic with Horry must establish their own interconnection or traffic exchange agreements with Horry.

**Disputed Language:** A retail business or residential end-user subscriber to Telephone Exchange Service provided directly or indirectly by either of the Parties.

**Discussion:** An interconnection agreement is between two parties who are offering local exchange service in the same area. Neither third parties nor their traffic are part of an interconnection agreement between Horry and MCI.<sup>2</sup>

MCI argues that if it were restricted to exchanging only traffic originated or terminated by its own end users, it would be prohibited from offering wholesale service. Horry do not agree with this assessment. MCI can offer any wholesale offering it chooses; however, only those wholesale offerings where MCI controls the traffic will be included in this agreement. If a third party (and not MCI) controls the traffic, then that third party must enter into its own agreements with Horry.

MCI can use this agreement to provide resale service to a third party carrier which in turn bills the end users. In a resale situation, the facilities-based carrier (e.g., MCI) provides the facilities and controls the traffic generated by those facilities, and the reseller acts as the billing party. The facilities-based provider provides the same service to the reseller's end user customers that it would provide to its own end user customers from a facilities perspective, but the reseller is billed for the service.

It is inappropriate for this agreement to incorporate the situation where a third non-party company has control of the service and traffic offered to the end user customer. A third party can control the local exchange service without building its own facilities by subcontracting with network providers for switching, loops, features, transport, and customer service. In this situation, the third party needs to contract directly with Horry to exchange service. An example of an arrangement where a company contracts for all the various

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<sup>2</sup> Transit traffic is local traffic that is routed through one party's tandem and is originated or terminated to the other party. The other party to the call is a third party to this agreement. Transit traffic is addressed in this agreement only from the perspective that transit service is provided to the two parties to this agreement. It does not address any obligations or reciprocal compensation impacting the third party.



network components is a CLEC who utilizes an unbundled network element platform (UNE-P). In UNE-P, the CLEC is responsible for all the traffic generated from its end user customers that terminates to other carriers. The UNE-P provider is also responsible for establishing contracts with the other carriers.

These two examples demonstrate that MCI is not restricted from providing wholesale service. However, only those wholesale offerings where MCI controls the traffic are properly included in this agreement.

MCI believes that section 251(a) of the Act supports the notion that end user customers can be indirectly connected. This is not an accurate conclusion. 47 U.S.C. § 251(a) requires that:

Each telecommunications carrier has the duty---

- (1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.

This section of the Act discusses direct and indirect connection between telecommunications carriers, and is referring to the physical interconnection of facilities and equipment. There is nothing in this statement to support the notion that end user customers can be indirectly connected to carriers. MCI's interpretation of this section is incorrect.

As stated above, a carrier that subcontracts network components may be "indirectly" connected to a third party carrier's network. However, the traffic generated by the third party is excluded from the reciprocal compensation and transport provisions of this agreement. The third party carrier must make its own arrangements for the traffic generated on the network it controls.

Interconnection arrangements are not vehicles for one Party to act as an aggregator. If interconnection agreements were not limited to carriers serving their own customers, one CLEC could obtain an interconnection agreement and terminate traffic for all other CLECs, CMRS providers and IXC's. In general, it is expected that intraLATA traffic would roughly be in balance between two connecting carriers. If a CLEC aggregates traffic, however, the traffic between the two parties would never be in balance.

The Commission should approve Horry's original language without the MCI changes.

### **ISSUE #3**

**Issue:** Is ISP traffic in the Commission's or FCC's jurisdiction in terms of determining compensation when FX or virtual NXX service is subscribed to by the ISP? (GT&C Glossary Sections 2.25, 2.28, and 2.34)

**Horry Position:** The issue in dispute between Horry and MCI is not whether ISP-Bound traffic is in the jurisdiction of the South Carolina Commission or the FCC, as MCI suggests. The issue is what constitutes ISP-bound traffic, especially when the CLEC assigns a virtual NXX as a dial-up ISP number and the ISP is not physically located in Horry's local calling area. Under Horry's proposed language all types of interexchange calls, including dial-up ISP calls using a virtual NXX, are consistent with the Commission's and the FCC's existing rules which exclude all such calls from reciprocal compensation and ISP intercarrier compensation.

#### Horry Proposed Language:

2.25 INTRALATA TRAFFIC. Telecommunications traffic that originates and terminates in the same LATA, including but not limited to IntraLATA toll, ISP bound and Local/EAS.

2.28 ISP-BOUND TRAFFIC. ISP-Bound Traffic means traffic that originates from or is directed, either directly or indirectly, to or through an information service provider or Internet service provider (ISP) who is physically located in an exchange within

the Local/EAS area of the originating End User Customer. Traffic originated from, directed to or through an ISP physically located outside the originating End User Customer's Local/EAS area will be considered switched toll traffic and subject to access charges.

2.34 LOCAL/EAS TRAFFIC. Any call that originates from an End User Customer physically located in one exchange and terminates to an End User Customer physically located in either the same exchange or other mandatory local calling area associated with the originating End User Customer's exchange as defined and specified in ILEC's tariff.

MCI Proposed Language:

2.25 INTRALATA TRAFFIC. Telecommunications traffic that originates and terminates in the same LATA, including but not limited to IntraLATA toll, ISP bound and Local/EAS. ISP bound traffic will be rated based on the originating and terminating NPA-NXX.

2.28 ISP-BOUND TRAFFIC. ISP-Bound Traffic means traffic that originates from or is directed, either directly or indirectly, to or through an information service provider or Internet service provider (ISP) that may be physically located in the Local/EAS area of the originating End User Customer or has purchased FX service from the CLEC. The FCC has jurisdiction over ISP traffic and sets the rules for compensation for such traffic.

2.34 LOCAL/EAS TRAFFIC. Any call that originates from an End User Customer physically located in one exchange and terminates to an End User Customer physically located in either the same exchange or other mandatory local calling area associated with the originating End User Customer's exchange as defined and specified in ILEC's tariff. ISP-bound traffic may be carried on local interconnection trunks but will be rated based on the originating and terminating NPA/NXX.

**Discussion:** The Commission's and the FCC's current intercarrier compensation rules for wireline calls clearly exclude interexchange calls from both reciprocal compensation and ISP intercarrier compensation. This is also the case for virtual NXX calls since they are no different from 1-800 calls and standard dialed long distance toll calls. All of these types of

calls are interexchange calls and “exchange access” that are exempt from existing reciprocal compensation rules. A “Virtual NXX” is an exchange code assigned to end users physically located in exchanges other than the one to which the code was assigned.

MCI cites both the *Adelphia Arbitration Order*<sup>3</sup> and the *US LEC Arbitration Order*<sup>4</sup> from the Commission that dealt with virtual NXX, and attempts to argue that these orders “should no longer be controlling, at least with regard to ISP-bound traffic.” (MCI Petition, pgs. 10-11) Horry strongly disagrees because as demonstrated in its discussion of this issue, virtual NXX for dial-up calls to ISPs is not “ISP-bound Traffic” but rather interexchange traffic that is subject to the appropriate access charges.

The ISP intercarrier compensation regime established in the FCC’s *ISP Remand Order*<sup>5</sup> does not apply to virtual NXX or other interexchange calls delivered to ISPs, as MCI would contend. The D.C. Circuit Court had no difficulty recognizing that the “interim [compensation] provisions devised by the [FCC]” apply only to “calls made to [ISPs] located within the caller’s local calling area.”<sup>6</sup> In other words, the ISP intercarrier compensation regime applies only to calls that would have been subject to reciprocal compensation if made to an end-user customer, rather than an ISP.

The D.C. Circuit’s understanding of the scope of the intercarrier compensation obligation established in the *ISP Remand Order* is correct. The question before the FCC with

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<sup>3</sup> *Petition of Adelphia Business Solutions of South Carolina, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252 (b) of the Communications Act of 1934, As Amended by the Telecommunications Act of 1996*, Docket No. 200-516-C, Order on Arbitration (“*Adelphia Arbitration Order*”), January 16, 2001.

<sup>4</sup> *Petition Of US LEC Of South Carolina, Inc. For Arbitration With Verizon South, Inc., Pursuant To 47 U.S.C. 252(b) Of The Communications Act Of 1934, As Amended By The Telecommunications Act Of 1996*, Docket No. 2002-181-C, Order No. 2002-619, (“*US LEC Arbitration Order*”), (August 30, 2002).

<sup>5</sup> Order on Remand and Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, 16 FCC Rcd 9151 (2001) (“*ISP Remand Order*”).

<sup>6</sup> *WorldCom, Inc. v. FCC*, 288 F.3d 429, 430 (D.C. Circuit 2002)

respect to ISP-bound traffic has always been whether calls to an ISP physically located in the same local calling area as the calling party are to be treated the same as calls to a local business. Indeed, the CLECs' long-standing argument that a call to an ISP is just like a call to a pizza parlor would be nonsensical if they were referring to a pizza parlor located across the state from the calling party, rather than to one physically located in the same local calling area as the calling party. Thus, in the *ISP Declaratory Ruling*<sup>7</sup> (§§ 12-15), the FCC rejected CLECs' arguments that a call to an ISP "terminate[s] at the ISP's local server" and "ends at the ISP's local premises." And, in the *ISP Remand Order* (§§ 10, 13), the FCC recognized that it was addressing the compensation due for "the delivery of calls from one LEC's end-user customer to an ISP in the same local calling area that is served by a competing LEC."

MCI also states that it is discriminatory to allow Horry to rate its FX and virtual NXX traffic as local when CLECs are not allowed to do the same, but it will not litigate this issue, as concerns Horry, for non-ISP traffic in light of the Commission's previous decisions. MCI then states that it reserves the right to have its FX and virtual NXX services rated as local if the FCC preempts the subset of states that have inconsistent rulings on the rating of CLEC FX or virtual NXX services.

The treatment of all such calls — under the Commission's rules, the FCC's rules, and Horry's practice— is consistent and not discriminatory. In all cases, reciprocal compensation and ISP intercarrier compensation do not apply to interexchange calls. Horry uses telephone numbers to determine whether calls are interexchange, but use those numbers only as a proxy for the location of the parties to a call, and where they represent the best information Horry has as to those locations or where inaccuracies affect a sufficiently small proportion of the

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<sup>7</sup> Declaratory Ruling and Notice of Proposed Rulemaking, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, 14 FCC Rcd 3689 (1999) ("*ISP Declaratory Ruling*").

traffic exchanged that the development of more accurate geographic billing factors (or use of more accurate location information) is unwarranted. Thus, because MCI calls to Horry's traditional FX customers (where the telephone number is not an accurate proxy for Horry customer's location) make up less than 1 percent of all CLEC calls to Horry customers, Horry has not developed billing factors to account for such calls. On the contrary, Virtual NXX calls account for 50 percent or more of the traffic CLECs receive from Horry. Bottom line, Horry and MCI could develop factors to determine the amount of calling from MCI to Horry FX customers, but since the amount of traffic is so low it is not warranted.

## **B. INTERCONNECTION**

### **ISSUE #4**

**Issue:** Should MCI have to provide service (a) only directly to end users and (b) only to End Users physically located in the same LATA to be covered by this agreement? (Interconnection Attachment Section 1.1)

**Horry position:** There are two issues in this section. (a) The traffic governed by this agreement is for telecommunications service provided by either Party to end user customers; and (b) the physical location of the originating and terminating customer determines the jurisdiction of the call.

**Disputed Language:** This Interconnection Attachment sets forth specific terms and conditions for network interconnection arrangements between ILEC and CLEC for the purpose of the exchange of IntraLATA Traffic that is originated by an End User Customer of one Party and is terminated to an End User Customer of the other Party, **where each Party directly provides Telephone Exchange Service to its End User Customers physically located in the LATA.** This Agreement also addresses Transit Traffic as described in Section 2.2 below. This Attachment describes the physical architecture for the interconnection of the Parties facilities and equipment for the transmission and routing of Telephone Exchange Service traffic between the respective End User Customers of the Parties pursuant to the Act.

**Discussion:** Issue (a) is the same issue as Issue 2. There are two parties to this agreement and traffic generated by third parties is not part of this agreement. The third party must have its own agreement to meet its 251(b) obligations. For the same reasons stated in regard to Issue 2, Horry language should be adopted.

Issue (b) deals with the ability of the parties to identify the proper jurisdiction of the calls. Both the FCC and the Commission have determined that the call jurisdiction is based on the physical location of the end user customers. The FCC has determined that the end-user customers involved in a telecommunications transmission must be physically located within the “local area” in order for the FCC to conclude that such traffic is “local.” See Order *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 F.C.C.R. 15499 (1996) at ¶ 1043.

This Commission has also ruled in two separate orders that the physical location of the customer determines the proper jurisdiction of calls. In the *Adelphia Arbitration Order*<sup>8</sup>, the Commission concluded that reciprocal compensation should be based on the physical location of the calling and called parties, not the NXX codes of those parties. In the *US LEC Arbitration Order*, the Commission held that:

This Commission has already addressed this issue in a prior arbitration and that decision supports Verizon’s position in that this Commission held that “reciprocal compensation is not due to calls placed to ‘virtual NXX’ numbers as the calls do not terminate within the same local calling area in which the call originated.” The Commission squarely held that compensation for traffic depends on the end points of the call – that is, where it physically originates and terminates. In rejecting the claim that “the local nature of a call is determined based upon the NXX of the originated and terminating number,” the Commission noted that, “[w]hile the NXX code of the terminating point is associated with the same local service area as the originating point, the actual or physical termination point of a typical call to a ‘virtual NXX’ number is not in the same local service area as the originating point of the call.”

*US LEC Arbitration Order, supra at n. 4.*

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<sup>8</sup> *Supra at n. 3.*

MCI somehow argues that if you limit the scope of the interconnection agreement only to customers physically located within the LATA, that this would in effect prevent MCI from providing telecommunications services to its customers. MCI is free to offer service in any LATA it wishes, but the traffic terminated will be in accordance with the interconnection agreement for IntraLATA traffic and in accordance with access tariffs for InterLATA traffic.

The Commission should continue to uphold its previous positions that the physical location of the customer is the criteria for determining the jurisdiction of the call and adopt Horry's language as proposed without modification.

#### **ISSUE #5**

**Issue:** Should all IntraLATA Traffic be exchanged on a bill and keep basis or should reciprocal compensation apply when out of balance? (Interconnection Attachment, Section 2.4)

**Horry Position:** Compensation for IntraLATA Traffic should be in the form of the mutual exchange of services provided by the other Party with no per minute of use billing related to the exchange of such IntraLATA Traffic. From the beginning of negotiations, Horry proposed that there be no per minute of use billing for the exchange of IntraLATA Traffic under the agreement because such traffic is believed to be roughly balanced. Because MCI is a CLEC and can change business plans at any time in order to serve a certain sub-set of end users customers, it can use regulatory arbitrage to its financial advantage. Horry does not have this flexibility to choose certain customers, because it is a carrier of last resort and has an obligation to provide basic local exchange service to all end user customers within its respective certificated service area.

**Disputed Language:** Interconnection Attachment, 2.4 The Parties agree to only route IntraLATA Traffic over the dedicated facilities between their networks. InterLATA Traffic shall be routed in accordance with Telcordia Traffic Routing Administration instruction and is not a provision of this Agreement. Both Parties agree that compensation for intraLATA Traffic shall be in the form of the mutual exchange of services provided by the other Party with no additional billing if the traffic exchange is in balance. Traffic



is considered out-of-balance when one Party terminates more than 60 percent of total Local/EAS traffic exchanged between the Parties. The Parties also agree that the compensation for ISP-bound traffic when out of balance is governed by the FCC's orders on compensation for ISP-bound traffic, specifically (1) the so-call ISP Remand Order [Intercarrier compensation for ISP-based Traffic, Docket No. 99-68, Order on Remand and Report and Order, 16 FCC Rcd 9151 (2001)] and (2) the modifications to that order made in the FCC's decision on Core Communications' forbearance request (Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. Paragraph 161 (c) from Application of the ISP Remand Order, WC Docket No. 03-171, released October 18, 2004). Traffic studies may be requested by either party to determine whether traffic is out of balance. Such traffic studies will not be performed more than four times annually. Should a traffic study indicate that Local/EAS/ISP-bound traffic exchanged is out-of-balance, either Party may notify the other Party that mutual compensation between the Parties will commence in the following month. The Parties agree that charges for termination of Local/EAS and ISP-bound Traffic on each Party's respective networks are as set forth in the Pricing Attachment, related to exchange of such traffic issued by either Party except as otherwise provided in this Agreement.

**Discussion:** Horry has proposed from the beginning of negotiations that there should not be a per minute compensation rate for the exchange of IntraLATA Traffic because such traffic is believe to be roughly balanced. It appears from MCI's position in Issue 3 that it intends to provide dial-up service to ISPs and it argues that such dial-up traffic using virtual NXX is subject to reciprocal compensation. As stated above with regard to Issue 3, such virtual NXX traffic is not "ISP-bound Traffic" under the FCC's *ISP Remand Order* and therefore is not subject to reciprocal compensation. The only traffic that would be subject to reciprocal compensation that is at issue here, is the remaining IntraLATA Traffic.

Moreover, MCI is a CLEC which can change its business plan at any time to serve a certain sub-set of end users. This gives MCI the ability to use regulatory arbitrage to its financial advantage. MCI can target a type of customer like an ISP, and thereby generate out-

of-balance traffic. Horry does not have the flexibility to choose certain types of customers, as Horry must serve any end user customer within its respective service area who requests service.

It is for these reasons that the Commission should adopt Horry's proposed language regarding compensation for IntraLATA Traffic.

#### ISSUE #6

**Issue:** Should Parties be required to provide (a) CPN and JIP; and (b) pay access charges on all unidentified traffic? (Interconnection Attachment Section 2.7.7)

**Horry position:** Yes. In order to properly identify the jurisdiction of the traffic exchanged between the parties, the parties should be required to provide CPN and JIP. The parties should have an incentive to properly identify the jurisdiction of the traffic exchanged between them.

**Disputed Language:** If either Party fails to provide accurate CPN (valid originating information) or and Jurisdiction Information Parameter ("JIP") on at least ninety percent (90%) of its total originating INTRALATA Traffic, then traffic sent to the other Party without CPN or JIP (valid originating information) will be handled in the following manner. All unidentified traffic will be treated as having the same jurisdictional ratio as the ninety (90%) of identified traffic. **The remaining 10 percent (10%) of unidentified traffic will be treated as having the same jurisdictional ratio as the ninety (90%) of identified traffic. If the unidentified traffic exceeds ten percent (10%) of the total traffic, all the unidentified traffic shall be billed at a rate equal to ILEC's applicable access charges. The originating Party will provide to the other Party, upon request, information to demonstrate that Party's portion of traffic without CPN or JIP traffic does not exceed ten percent (10%) of the total traffic delivered.** The Parties will coordinate and exchange data as necessary to determine the cause of the CPN or JIP failure and to assist its correction.

**Discussion:** As stated in Issue 1, some carriers are misrepresenting traffic as local to avoid paying access charges. Horry believes that if the incentive for misrepresenting traffic is eliminated then carriers are more likely to comply and provide accurate information.

Horry has proposed a 90% compliance rate for complying with the CPN and JIP. As stated in Issue 1, the Ordering and Billing Forum (OBF) strongly recommends that JIP be included in the signaling information. The scope of this agreement is limited to IntraLATA traffic that is exchanged between MCI and Horry. Since the traffic is IntraLATA, all the traffic should be originating on the local/regional switch. MCI controls 100% of this traffic. Thus, 100% of the traffic should have these parameters. However, Horry has built in a 10% grace factor. Beyond 10%, MCI needs to take responsibility for the traffic on its network. If MCI or its customers are misrepresenting traffic, Horry does not believe they should get an automatic discount on access traffic. Further, the proposed language is reciprocal and therefore, Horry is not asking MCI to do anything Horry itself is not willing to do.

The Commission should adopt the original Horry language without MCI's modifications.

## **ISSUE #7**

**Issue:** Does the contract need the limit of "directly provided" when other provisions discuss transit traffic, and the issue of providing service directly to end users also is debated elsewhere? (Interconnection Attachment Section 3.1)

**Horry position:** Yes. As discussed in Issues 2 and 4, third party traffic is not part of this agreement between Horry and MCI.

**Disputed Language:** Dedicated facilities between the Parties' networks shall be provisioned as two-way interconnection trunks, **and shall only**

**carry IntraLATA traffic originated or terminated directly between each Parties End User Customers.** The direct interconnection trunks shall meet the Telcordia BOC Notes on LEC Networks Practice No. SR-TSV-002275.

**Discussion:** This issue is essentially the same as Issue 2. Third parties are not part of this agreement and are obligated to directly contract Horry for the exchange of traffic with Horry even if they utilize other parties' networks to achieve the physical interconnection.

In the statement of this issue, MCI raises the issue of transit traffic. The only reason this agreement has language regarding transit traffic is because Horry has a tandem in its network. When MCI originates local traffic that terminates to a CLEC, CMRS or RLEC that has an NPA-NXX with a homing arrangement of a Horry tandem in the LERG, transit traffic is generated. If MCI originates such traffic, the agreement states that MCI will pay for the transit rate to Horry. The transit traffic language does not place any obligations on the third party carriers. In addition, the language specifically states that payment of reciprocal compensation on such traffic is not part of this agreement but instead must be negotiated between MCI and the third party. This handling of transit traffic is consistent with Horry's position that the carriers may have indirect "physical" interconnection facilities but must also have direct contractual arrangements.

The Commission should adopt the original Horry language without MCI's modifications.

## **ISSUE #8**

**Issue:** Should Parties have to provide the specified signaling parameters on all calls? (Interconnection Attachment Section 3.6)

**Horry position:** All signaling parameters are to be included in the signaling information whatever the source.

**Disputed Language:** Signaling Parameters: ILEC and CLEC are required to provide each other with the proper signaling information (e.g. originating accurate Calling Party Number, **JIP** and destination called party number, etc.) pursuant 47 C.F.R. § 64.1601, to enable each Party to issue bills in an accurate and timely fashion. All Common Channel Signaling (CCS) signaling parameters will be passed along as received **provided** including CPN, JIP, Originating Line, Calling party category, Charge Number, etc. All privacy indicators will be honored.

**Discussion:** There are two issues included in the disputed language of this section. First is the proper identification of the call jurisdiction as discussed in Issues 1 and 6. Second is the statement by MCI that signaling parameters will only be “passed along as received.” Signaling information is generated by the switch serving the customer. The end user customers connected to MCI would be MCI’s end user customers it serves directly or resellers of MCI’s Service. Since both these categories of customer utilize the MCI switch, MCI is in complete control of the signaling information generated. MCI is not a tandem provider in South Carolina; therefore, there should not be any carrier connecting to MCI to “pass along” signaling information. Therefore, Horry’s wording of this section should be adopted by the Commission.

## **C. NUMBER PORTABILITY**

### **ISSUE #9**

**Issue:** Should the Parties be providing service directly to End Users to port numbers? (Number Portability Attachment Section 1.1)

**Horry position:** The current FCC rules require only service provider portability. Horry’s proposed language in the agreement is consistent with

Horry's obligations and the FCC's rules regarding number portability.

**Disputed Language:** The Parties will offer service provider local number portability (LNP) in accordance with the FCC rules and regulations. Service Provider portability is the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another. **Under this arrangement, the new Telecommunications Service provider must directly provide Telephone Exchange Service or resell an end user local exchange service through a third party Telecommunications Service provider to the End User Customer porting the telephone number.** The dial tone must be derived from a switching facility that denotes the switch is ready to receive dialed digits. **In order for a port request to be valid, the End User Customer must retain their original number and be served directly by the same type of Telecommunications Service subscribed to prior to the port.**

**Discussion:** The definition of service provider portability states:

[S]ervice provider portability means the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.

47 C.F.R. § 52.21(q). Based on the FCC rules and numbering standards, Service Provider Portability is the only type of portability required. Third Report and Order, *Telephone Number Portability*, 13 F.C.C.R. 11701 (1998), at ¶ 3 (“In light of the statutory definition, Section 251(b)(2) requires service portability, but not location or service portability.”) At some point in the future other types of portability may be required or different standards may be developed. However, there are not rules or standards today governing porting of numbers to non-telecommunications carriers.

The definition of service provider portability is specific that the port must be between two telecommunications providers. It is also specific in that it requires the end users to have telecommunications service before and after the port. The definition does not address porting to a customer who switches to a non-telecommunications service. It also does not address the occasion of porting between a telecommunications service provider and a non-telecommunications provider. There are no rules requiring these types of ports. There are also no standards in the Alliance for Telecommunications Industry Solutions (“ATIS”) standards body to address how these ports would actually take place, the billing associated with the resulting calls, and how traffic would be exchanged.

Time Warner has stated in hearings before the Commission that it intends to utilize MCI to obtain telephone numbers and perform porting functions for Time Warner’s VoIP customers. Time Warner has taken the position, however, that the VoIP service they provide to their customers is not a “telecommunications service.” Although MCI is a telecommunications service provider, there is no telecommunications service being provided to the end user in the above-described situation. MCI may be providing a telecommunications service to Time Warner but not to the end user. Therefore, any proposed arrangement between MCI, Time Warner and Horry does not meet the definition of Service Provider Portability. The end user customer would be moving its telecommunications service from Horry to Time Warner, which will claim it is not providing a telecommunications service to the end user. Also, Time Warner would be the ultimate provider of service to the end user, and it does not want to be considered a telecommunications service provider. Thus, the two basic qualifications for Service Provider Portability are not met. The end user does not have

telecommunications service after the port and the service provider is not a telecommunications service provider.

The FCC's CC Docket No. 99-200 referenced by MCI in its Arbitration Petition is not a generalized order applying to all VoIP providers. The order is a waiver for one VoIP provider to expand its trial and obtain numbers directly. No other providers can obtain numbers based on that order. The order also requested the North American Number Committee (NANC) to investigate if and how standards would change to accommodate a VoIP provider. Until there is a resolution on these issues, Horry has no obligation to deviate from the current rules and standards.

Horry is also not prohibiting MCI from offering resale service, as MCI asserts, and has specifically included resale in the proposed language. The inclusion of other types of wholesale service offered by MCI is the same issue raised in Issues 2 and 4(a) above.

The Commission should adopt Horry's proposed language without modification.

#### **D. PRICING**

##### **ISSUE #10**

**Issue:** What should the reciprocal compensation rate be for out-of-balance local/EAS or ISP-bound traffic? (Pricing Attachment D)

**Horry Position:** As discussed in Issues 3 and 5, there is not a need for a reciprocal compensation rate. In fact, during the entire course of negotiations the Parties never discussed what would be the appropriate reciprocal compensation rate. All of the discussion surrounded if there should even be reciprocal compensation.

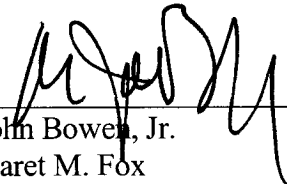
**Disputed Language:** Pricing Attachment, Section D \$0.0007



**Discussion:** As discussed in Issues 3 and 5, there is not a need for the Commission to set a reciprocal compensation rate. The first time that MCI proposed any reciprocal compensation rate was when it filed its Arbitration Petition. The parties have had no negotiations whatsoever with respect to the reciprocal compensation rate. Negotiation is required before an issue can be submitted for arbitration. This issue is, therefore, not properly before the Commission at this time. However, should the Commission determine to take up the issue, Horry reserves the right to submit testimony and arguments regarding the issue during the course of this proceeding.

Respectfully submitted,

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M. John Bowen, Jr.  
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ATTORNEYS FOR HORRY TELEPHONE  
COMPANY

July 15, 2005

Columbia, South Carolina

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2005-188-C

RE:   Petition of MCImetro Access Transmission       )  
      Services, LLC for Arbitration of Certain Terms       )  
      and Conditions of Proposed Agreement with       )  
      Horry Telephone Cooperative, Inc. Concerning       )  
      Interconnection and Resale under the       )  
      Telecommunications Act of 1996       )  
\_\_\_\_\_ )

**CERTIFICATE OF  
SERVICE**

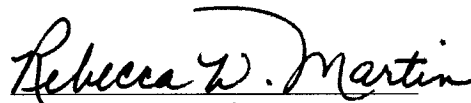
I, Rebecca W. Martin, Secretary for McNair Law Firm, P. A., do hereby certify that I have this date served one (1) copy of a Return to Petition in the above-referenced matter on the following parties of record by causing said copy to be hand-delivered by courier at the addresses stated below.

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July 15, 2005

Columbia, South Carolina